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10/587,091

07/20/2006

Salvatore Carbone

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07/09/2008

IP STRATEGIES  
12 1/2 WALL STREET  
SUITE E  
ASHEVILLE, NC 28801

EXAMINER

LONG, ROBERT FRANKLIN

ART UNIT

PAPER NUMBER

3764

MAIL DATE

DELIVERY MODE

07/09/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/587,091 | <b>Applicant(s)</b><br>CARBONE, SALVATORE |  |
|                              | <b>Examiner</b><br>Robert F. Long    | <b>Art Unit</b><br>3764                   |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-26 is/are rejected.
- 7) ☒ Claim(s) 27 and 28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>07/20/06</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 27 and 28**, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. **Regarding claim 27**, The phrase “even with heavy weights” is unclear and indefinite as to what the exact amount of heavy weights refers. Applicant is advised to take appropriate action.

4. **Regarding claim 28**, The phrase “guarantee more safety both actively and passively” is unclear and indefinite as to what the “guarantee” of safety is referring or claiming and what “actively and passively” constitutes. Applicant is advised to take appropriate action.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. **Claims 15, 16, 21, and 23-28**, are rejected under 35 U.S.C. 103(a) as being unpatentable over **Hummer Jr. (US 7001314 B1)**.

**Regarding claims 15, 16, and 21** Hummer Jr. discloses Gym work-out equipment, **10, (figures 1-10)**, for the safe training of the chest, deltoids, trapeziums and triceps muscles during exercise, (*Abstract, column 7, lines 11-24, Table*), comprising: a moveable bench, (*column 2, lines 54-59*), that allows an athlete to do exercises with the back-rest in a horizontal position for stretching and pectoral crosses, a slanted position for pectoral crosses and an up-right position for deltoids and stretching with dumb-bells for triceps; (*column 7, lines 11-24, view Table*), and an assist mobile system of arms **pivotaly adjustable dumbbell supports/arm 90**, (*column 2, lines 28-42/54-59, column 6, lines 40-60, figures 1-7*) that can be positioned according to the desired exercise, **variety of positions**, (*column 2, lines 53-67, column 5, lines 28-44, column 6, lines 36-39/55-67, column 7, lines 4-24*), (servomechanisms), used to hold heavy or light weights (bars and dumb-bells) via mechanicals, **power drive source/motor 46**, (*column 2, lines 28-42/54-59, column 4 lines 12-36, figures 1-2*) commands activable through rods, pedals, switches or push buttons, **pushbuttons 161/162/control box 163**, (*column 2, lines 43-52, figures 1-10*) but fails to disclose the system of arms holding the weight via hydraulics or pneumatics and equipped with a universal bracket system.

Hummer Jr. does teach that, **arm 90**, is capable of *receiving hex shaped dumbbells or circular weights*, (column 6, lines 8-11) and a similar **power drive source/motor 46**, (column 2, lines 28-42/54-59, column 4 lines 12-36, figures 1-2) system that could comprise hydraulics or pneumatics. Further, Slattery teaches mobile arms that are operated through a pneumatic air compressed system, *DC motor 120, gear box 122, flexible coupling, 123, lead screw 124, and mating nut 125 could be replaced by a hydraulic cylinder or a pneumatic cylinder*, (column 4, lines 48-59, figures 1-11).

All of the parts and technique of using them are known in Hummer Jr. and the marketplace/exercise equipment arenas. The only difference is the combination of the “old elements” into a single exercise apparatus with a universal bracket along with pneumatics or hydraulics as a power means for position/holding means. The marketplace also reflects the reality that position/holding means utilized with exercise apparatus are common place in exercise equipment. Hummers automatic dumbbell spotter device could be modified to have universal bracket along with pneumatics or hydraulics as a power means for position/holding means. Thus, it would have been obvious to the exercise artisan to implement/substitute or use position/holding means with a hydraulics/pneumatics which are commonly available and understood in the art and the marketplace in order to achieve the commonly understood benefits of such adaptation as desired shape, increase/decrease size, safety, and holding/positioning means.

**Regarding claims 23**, Hummer Jr. discloses adaptable foot rest, foot support 180, (*Abstract, column 7, lines 46-47, and column 8, lines 1-2, figures 1, 2, 8, and 9*).

**Regarding claims 24 and 25**, Hummer Jr. discloses side panels, **support frame 10/side frames 12 and 14**, but fails to disclose a the panels for protection and safety for passers by who could come in contact with moving parts and/or to be used as support for advertising material.

Hummer Jr. does teach the **support frame 10/side frames 12 and 14** ease of grasping, (column 2, lines 46-52 and column 3, lines 31-58) which could encompass the safe protection from passers by. Further, the panels could be used for advertising material, magazine rack, and/or a means for holding information of other products.

Adapt/sub/combine/improve

All of the parts and technique of using them are known in Hummer Jr. and the marketplace/exercise equipment arenas. The only difference is the combination of the “old elements” into a single exercise apparatus with panels for advertising and safety. The marketplace also reflects the reality that safety panels and advertisement means utilized with exercise apparatus are common place in exercise equipment and the Hummers automatic dumbbell spotter device could be modified to have panels for both advertising and safety. Thus, it would have been obvious to the exercise artisan to implement/substitute or use safety/advertisement panels that are commonly available and understood in the art and the marketplace in order to achieve the commonly understood benefits of such adaptation as desired shape, increase/decrease size, safety, and advertisement means.

**Regarding claim 26**, Hummer Jr. discusses telescoping arms in similar devices for position adjustment as being commonplace in exercise arenas, *one dumbbell support design, the two side frames are connected by a two telescopingly interconnected crossbars (column 1, lines 53-55). Further, Hummer Jr. teaches using rotational screws for an improvement of the telescoping design as the means for vertical adjustment, (column 4, lines 12-24, figures 1-11).*

**4. Claims 17- 20**, rejected under 35 U.S.C. 103(a) as being unpatentable over **Hummer Jr. (US 7001314 B1) in view of Slattery (US 6632159 B1).**

**Regarding claims 17, 19, and 20** Hummer Jr. fails to disclose the mobile arms can be operated through a pneumatic air compressed system and/or electromechanical or a electro-hydraulic system commanded from switches or rods respectively,

Hummer Jr. does teach using a **power drive source/motor 46**, *(column 2, lines 28-42/54-59, column 4 lines 12-36, figures 1-2)* that could be a pneumatic air compressed system. *Further, Slattery teaches mobile arms that are operated through a pneumatic air compressed system, DC motor 120, gear box 122, flexible coupling, 123, lead screw 124, and mating nut 125 could be replaced by a hydraulic cylinder or a pneumatic cylinder, (column 4, lines 48-59, figures 1-11).*

All of the parts and technique of using them are known in Hummer Jr. and the marketplace/exercise equipment arenas. The only difference is the combination of the “old elements” into a single exercise apparatus with panels for advertising and safety. The marketplace also reflects the reality that pneumatic air compressed, electromechanical and/or electro-hydraulic systems, commanded from switches or rods

respectively, is common place in exercise equipment and the market place. Hummers automatic dumbbell spotter device could be modified to have these common power sources as the source/means for **power drive source/motor 46**. Thus, it would have been obvious to the exercise artisan to implement/substitute or use these or other power sources that are commonly available and understood in the art and marketplace in order to achieve the commonly understood benefits of such adaptation as increase/decrease range of power, smooth movements, and resistance control means.

**Regarding claims 18**, Hummer Jr. discloses all limitations of the gym work out system as discussed in claim 1 having mobile arms can be operated through a mechanical system of levers and pulleys, (*column 2, lines 34-42*), but fails to disclose that the mobile arms are commanded through pedals.

However, Slattery teaches a similar device with mobile arms that can be commanded through pedals, *Buttons 251-253 could be foot activated, (column 7, lines 15-24, figure 4)*.

All of the parts and technique of using them are known in Hummer Jr. and the marketplace/exercise equipment arenas. The only difference is the combination of the “old elements” into a single exercise apparatus with pedals for operation of servomechanisms or arms for control. The marketplace also reflects the reality that pedals are used to control mechanical systems of levers and pulleys as taught by Slatter and is common place in exercise equipment. Hummers automatic dumbbell spotter device could be modified to have a pedal as a button/device for controlling the motor. Thus, it would have been obvious to the exercise artisan to implement/substitute



or use a foot pedal commonly available and understood in the art and the marketplace in order to achieve the commonly understood benefits of such adaptation as ease of use, increase/decrease range of power, smooth movements, and resistance control means.

5. **Claim 22** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Hummer Jr. (US 7001314 B1) in view of Anderson et al. (US 7163488 B2).**

**Regarding claim 22**, Hummer Jr. fails to disclose a switchboard that enables the arms to memorize the different positions chosen by the athlete or user.

However, Anderson et al. teaches a similar gym equipment device with a switchboard that enables the arms to memorize the different positions chosen by the athlete or user, *computer based control mechanism, (column 5, lines 53-67, figures 1-7).*

All of the parts and technique of using them are known in Hummer Jr. and the marketplace/exercise equipment arenas. The only difference is the combination of the “old elements” into a single exercise apparatus with computer controlled arms with memory of positions. The marketplace also reflects the reality that computer controlled arms or exercise apparatuses equipped with memory of positions is common place in exercise equipment as taught by Anderson et al. and the market place/exercise. Hummers automatic dumbbell spotter device could be modified to have a switch board control system with memory of positions. Thus, it would have been obvious to the exercise artisan to implement/substitute or use a foot control system with memory that are commonly available and understood in the art and the marketplace in order to

achieve the commonly understood benefits of such adaptation as foot increase/decrease range of power/motion, shorter/longer movements, and/or desired individual settings.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. **Walker; Christopher W. et al. (US 5058888 A) and Mauriello; Anthony (US 5688216 A).**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert F. Long whose telephone number is (571)270-3864. The examiner can normally be reached on 5-4-9 (7:30-5).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571) 272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Robert F Long/  
Examiner, Art Unit 3764  
Monday, June 30, 2008

/Fenn C Mathew/  
Primary Examiner, Art Unit 3764